

DEPARTMENT OF JUSTICE
To Provide an Appropriation for Montana's
Litigation to Protect Interstate Waters

The Department of Justice is engaged in a lawsuit against the State of Wyoming before the United States Supreme Court for the protection of water rights allocated to Montana under the Yellowstone River Compact of 1951. Montana has secured the assistance of consulting scientists and outside counsel to work with our state attorneys in the long-term litigation.

Background

In 1951, Montana, Wyoming and North Dakota finalized an interstate compact to allocate water rights for the Yellowstone River and its tributaries. Article V of the Compact apportions among the compacting states the waters of the Tongue and Powder Rivers that were in use in each state on January 1, 1950, and for which appropriative water rights existed in each state as of that time.

The Compact further requires Wyoming to curtail water uses in the Tongue and Powder River Basins when:

1. Wyoming's consumption is in excess of Wyoming's pre-January, 1950 consumption, and
2. the amount of water necessary to satisfy downstream pre-1950 uses of such water is not passing the state line into Montana.

In water short years Montana has unsuccessfully called for delivery of additional water from Wyoming, and Wyoming has blocked efforts to resolve the disputes through the dispute resolution provisions of the Compact.

Wyoming's historic and continuing refusal to curtail consumptive uses has prevented Montana from receiving its equitable share of the waters of the Tongue and the Powder Rivers and has resulted in injuries to Montana and its water users. Montana is left with no alternative but to litigate the dispute in the U.S. Supreme Court.

Funding Request

The funding request in the amount of \$3 million is necessary to insure that adequate resources and expertise are available for the litigation. The Montana Constitution confirms and protects existing water rights with a concomitant obligation to insure protection of rights secured by the state under interstate compacts such as the Yellowstone River Compact.

Litigation in Original Jurisdiction is both lengthy and costly. It often requires that the U. S. Supreme Court appoint a Special Master to hear the full factual allegations regarding the appropriate division of the waters. Such Special Masters are expensive and often secure the services of additional scientific experts to assist in the analysis. The costs incurred in this lengthy process are borne by the states involved in the dispute.

The Department proposes that the necessary funding to be secured as a biennial appropriation.